

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

AMERICAN WHITEWATER and)
AMERICAN RIVERS,)

Plaintiffs,)

v.)

UNITED STATES ARMY CORPS)
OF ENGINEERS, UNITED)
STATES FOREST SERVICE, and)
UNITED STATES FISH AND)
WILDLIFE SERVICE,)

Defendants.)

Case No. 1:24-cv-00284-MR-WCM

**PLAINTIFFS' UNOPPOSED
MOTION TO WITHDRAW
MOTION FOR PRELIMINARY
INJUNCTION AND
MEMORANDUM IN SUPPORT**

MOTION

Pursuant to Federal Rule of Civil Procedure 7, American Whitewater and American Rivers, (collectively, “River Advocates”), respectfully move to withdraw their pending Motion for Preliminary Injunction (ECF No. 5). River Advocates’ Motion for Temporary Restraining Order (ECF No. 5) was previously denied (ECF No. 24). Defendants and Defendant-intervenor are not opposed to River Advocates’ withdrawal request.¹

¹ I certify that no artificial intelligence was used in the preparation of this Motion except for artificial intelligence embedded in standard legal research resources.

MEMORANDUM IN SUPPORT

After weeks of attempting to resolve this dispute without invoking the jurisdiction of the court, River Advocates filed suit around 9 a.m. on November 18. ECF No. 1. Within 30 minutes of filing, counsel for River Advocates sent the complaint to Defendants and explained that “if the defendant agencies do not commit to stop the ongoing, unlawful work in the Nolichucky Gorge by the end of the day on [November 19], we will seek emergency preliminary relief from the district court.” ECF No. 5-1.

Defendants did not make that commitment and did not inform River Advocates of any action taken to stop the unlawful work in the Gorge harming River Advocates and their members. Consequently, River Advocates moved for temporary restraining order and preliminary injunction on November 20. *See* ECF No. 5.

River Advocates requested that the Court “enjoin Defendants’ approvals without prejudice to their ability to re-issue approvals with the mitigation requirements necessary to comply with law, which would protect the [Nolichucky] Gorge.” ECF No. 5-1 at 1.

The statements and citations in this Memorandum have been checked for accuracy by an attorney or paralegal.

On December 4, Defendants responded to River Advocates’ Motion for Preliminary Injunction. Defendant United States Army Corps of Engineers (“Army Corps”) represented to the court that as of December 2 it had “directed CSX to cease from commencing any work in waters of the United States that would require Corps authorization.” ECF No. 29-5 at ¶ 4. The Corps further explained that “this prohibition extends to any excavation or dredging of material from the Nolichucky River or its tributaries in both Tennessee and North Carolina, and any deposition of dredge or fill material into those waters.” *Id.*

CSX represented that it expects the Army Corps to issue new approvals for its work in the Nolichucky River Gorge, that these approvals may “take up to several additional weeks” to issue, and that CSX “anticipates continuing its pause in work activities that would constitute dredging or filling in jurisdictional waters” in the interim. ECF No. 30 at 11.

These commitments provide the bulk of the preliminary relief requested in River Advocates’ Motion for Preliminary Injunction. Accordingly, River Advocates respectfully move to withdraw that Motion (ECF No. 5) while reserving their right to seek preliminary relief in the future if necessary.

Respectfully submitted, this the 6th day of December, 2024.

/s/ J. Patrick Hunter
J. Patrick Hunter

N.C. Bar No. 44485
Sam Evans
N.C. Bar No. 44992
Clara Derby
N.C. Bar No. 62330
SOUTHERN ENVIRONMENTAL LAW
CENTER
48 Patton Ave., Suite 304
Asheville, NC 28801-3321
Telephone: 828-258-2023
phunter@selcnc.org; sevans@selcnc.org;
cderby@selcnc.org

Counsel for River Advocates

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2024, I electronically filed the foregoing Motion with the Clerk of the Court using the CM/ECF system, which will cause a Notice of Electronic Filing to be sent to all counsel of record.

/s/ J. Patrick Hunter

J. Patrick Hunter

N.C. Bar No. 44485

SOUTHERN ENVIRONMENTAL LAW
CENTER

48 Patton Ave., Suite 304

Asheville, NC 28801-3321

Telephone: 828-258-2023

phunter@selcnc.org

Counsel for River Advocates